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Order 2001-6-1

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 1st day of June, 2001

Served: June 1, 2001

Application of

TASMAN HELICOPTERS LTD.

for an exemption under 49 U.S.C. §40109(g)

Docket OST-2001-9775 → 4

ORDER DENYING EXEMPTION

Summary

In this order we are denying the request of Tasman Helicopters Ltd. for an exemption to carry emergency cabotage traffic in the vicinity of Seward, Alaska.

Application

By application filed May 29, 2001, Tasman Helicopters Ltd., a foreign air carrier of Canada, requests an exemption under 49 U.S.C. §40109(g) to permit it, for a period of 100 days, to provide services in air transportation within the State of Alaska on behalf of Godwin Glacier Dog Sled Tours (Godwin). Specifically, Tasman Helicopters proposes to transport tourists between Seward, Alaska, and Godwin's area of dog sled operations (involving flights of approximately nine minutes' duration), using Bell 407 aircraft. Tasman Helicopters states that no U.S. carrier stationed in Alaska, Washington, or Oregon, and operating comparable aircraft, is available to conduct these operations. Finally, Tasman Helicopters states that grant of its request is required to enable Godwin to fulfill its obligations to its customers.

Responsive Pleadings

Responsive pleadings have been filed by Godwin, Evergreen Helicopters of Alaska, Inc. (Evergreen), Era Helicopters, Inc. (Era), and Air Logistics of Alaska, Inc.

Godwin filed an answer in support of the application, stating that Tasman Helicopters is the only provider available with adequate aircraft and insurance to meet its needs. It further states that it has contracts with cruise and rail lines to provide dog sled rides to their passengers, and needs the services of Tasman Helicopters on a temporary basis to move these passengers from Seward to a nearby glacier, until United Helicopters, a U.S. carrier based in Bellingham, Washington, is in a position to meet its transportation needs.

Evergreen, Era, and Air Logistics oppose the request. Evergreen states that it has aircraft available that will meet the needs of Godwin. Evergreen notes, however, that Godwin was delinquent in paying certain bills payable to it for services it provided Godwin in 1999. Evergreen supplied a copy of a Judgment on Confession issued by the District Court for the State of Alaska, ordering Godwin's principal to pay this delinquency. Evergreen states that it will make its aircraft available to Godwin provided that Godwin pays past monies due and provides assurances that it will meet its financial obligations with respect to aircraft provided for the services at issue in this proceeding.

Era states that it has aircraft available to meet Godwin's needs on some days during the summer season; and that it does not believe that Godwin's circumstances constitute an emergency warranting the grant of emergency cabotage authority to a foreign air carrier.

Air Logistics states that the circumstances faced by Godwin are not unusual and do not constitute an emergency, and that alternate lift appears to be available within the local Alaskan industry

Godwin filed two replies, stating that it had previously been advised by Evergreen that Evergreen did not have aircraft available; that it has made partial payments towards meeting its obligations to Evergreen; and that the lack of resolution of this matter is forcing it to cancel pre-booked tours. Godwin further states that Era's aircraft, based in Anchorage and Valdez, cannot provide the proposed services because of the travel time to and from Seward and the costs involved.

Statutory Standard

Under 49 U.S.C. §40109(g), we may authorize a foreign air carrier to transport commercial traffic between U.S. points (*i.e.*, cabotage traffic) only under limited circumstances. Specifically, we must find *all* of the following: (1) that the authority is in the public interest; (2) that, because of an emergency created by unusual circumstances not arising in the normal course of business, U.S. air carriers holding certificates under 49 U.S.C. §41102 cannot accommodate the traffic involved; (3) that all possible efforts have been made to accommodate the traffic by using the resources of U.S. carriers; and (4) that the authority is necessary to avoid unreasonable hardship to the traffic.¹

¹ An additional criterion, which is not relevant in this case, is that during a labor dispute we must also find that granting an emergency cabotage exemption will not result in undue advantage to either side.

Decision

We have decided to deny the request of Tasman Helicopters. The record demonstrates that a U.S. carrier, Evergreen Helicopters of Alaska, has aircraft available which will meet the air transportation requirements of Godwin, and that another U.S. carrier, Era Aviation, may have aircraft available to accommodate at least some of those transportation requirements. Given the availability of at least one U.S. carrier to perform the services at issue in this proceeding, we find that Tasman Helicopters' request has failed to meet the threshold test for exemption under 49 U.S.C. §40109(g) and must be denied.²

ACCORDINGLY,

1. We deny the application of Tasman Helicopters Ltd. for an exemption under 49 U.S.C. §40109(g); and
2. We will serve a copy of this order on Tasman Helicopters Ltd., Evergreen Helicopters of Alaska, Inc., Era Aviation, Inc., Air Logistics of Alaska, Inc., Godwin Glacier Dog Sled Tours, the Department of State, and the Federal Aviation Administration (AFS-50).

By:

SUSAN MCDERMOTT
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

² While we note that Evergreen Helicopters of Alaska has stated that it is prepared to conduct operations for the charterer only under certain specified financial conditions, those conditions, in the circumstances presented, do not alter the availability of the U.S. carrier's services within the context of 49 U.S.C. §40109(g).